



March 12, 2007

25 Legal Scholars Support Constitutionality of DC Voting Rights

Dear Representative:

DC residents pay federal income taxes, serve on juries and die in wars to defend American democracy, but they do not have voting representation in the Congress.

This lack of representation is inconsistent with our nation's core democratic principles. Justice Hugo Black put it well in *Wesberry v. Sanders* in 1964:

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.

Congress is currently considering granting voting rights to Americans living in Washington, DC. Lawmakers have been faced with questions about the constitutionality of extending the right to vote to residents of a "non-state."

As law professors and scholars, we would like to address these questions and put to rest any concerns about the constitutionality of extending the right of representation to residents of the District.

While the language of the Constitution *literally* requires that House members be elected "by the People of the Several states," Congress has not always applied this language so literally. For example, the Uniformed and Overseas Citizens Absentee Voting Act allows U.S. citizens living abroad to vote in congressional elections in their last state of residence – *even if* they are no longer citizens there, pay any taxes there, or have any intent to return.

To fully protect the interests of people living in the capital, the Framers gave Congress extremely broad authority over all matters relating to the federal district under Article I, § 8, clause 17 (the "District Clause"). Courts have ruled that this clause gives Congress "extraordinary and plenary power" over DC and have upheld congressional treatment of DC as a "state" for purposes of diversity jurisdiction and interstate commerce, among other things. Article III provides that courts may hear cases "between citizens of different states" (diversity jurisdiction). The Supreme Court initially ruled that under this language, DC residents could not sue residents of other states. But in 1940, Congress began treating DC as a state for this purpose – a law upheld in *D.C. v. Tidewater Transfer Co.* (1949).

The Constitution also allows Congress to regulate commerce "among the several states," which, literally, would exclude DC. But Congress' authority to treat DC as a "state" for Commerce Clause purposes was upheld in *Stoughtenburg v. Hennick* (1889).

(over, please)

We believe, under the same analysis of the Constitution, that Congress has the power through "simple" legislation to provide voting representation in Congress for DC residents.

Sincerely,

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